

Chapter 2

Inspection and Compliance Program

The General Manual provides detailed information regarding general inspection and investigative procedures, along with a good discussion about the rulemaking process and the Safety Assurance and Compliance Program (SACP). However, there are some policies and procedures that are specific to the MP&E Discipline and warrant inclusion in this manual.

Allocation of Resources

The regional supervisors, along with the MP&E Specialist, are responsible for coordinating *special* MP&E assignments and activities within the region using national and regional data to allocate Inspector resources. The regional supervisors, through the MP&E Specialist, shall establish priorities appropriate to the urgency and seriousness of any alleged complaint, violation, or incident.

Inspectors are responsible for coordinating daily inspection activities to ensure adequate coverage of their territory. The Inspector should plan to visit all assigned inspection points within their territories as circumstances warrant, unless directed otherwise by Regional management. (See General Manual, Part IV, Chapter 2.)

Regular Inspection Point

Each Inspector will prepare and maintain an accurate Regular Inspection Point (RIP) list of inspection points for railroads within his/her assigned territory. The RIP list, and any subsequent changes to the list, shall be forwarded to the Regional Specialist. The Specialist is responsible for reviewing Regional RIP lists for accuracy.

Inspection/Activities Priorities

The allocation of resources will often deviate from the desired goal because of unforeseen events. When these events occur, Regional Administrators, Deputy Regional Administrators, Specialists and Inspectors will base their decisions on the following priorities:

1. Accident investigations;
2. Congressional complaint investigations;

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3. Waiver petition investigations;
4. Safety Assurance and Compliance Program - SACP;
5. Regular complaint investigations;
6. Sample locomotive/car inspections;
7. Steam locomotive - Boiler inspections;
8. Site-Specific (Routine) Inspections.

Accident Investigations

Refer to the General Manual, Part IV, Chapter 9 for agency policies and procedures. The Accident Branch has also produced written guidance for accident investigations. The following resources are available for assessing commodity hazards and rail equipment damage and can be provided to the On-Scene Coordinator:

Emergency Assistance:

#	Chemtrec	800-424-9300
#	Chlorep	703-527-3887
#	NACA Pesticide Safety	888-663-2155
#	Bureau of Explosives	202-639-2910
#	Poison Control Center	800-222-1222
#	National Response Center	800-424-8802
#	FEMA	202-646-2044
#	Nuclear Regulatory Commission	301-951-0550
#	Transportation Crisis Mgt Center	202-366-5270
#	FRA Public Affairs Office	202-493-6024

Congressional Complaints

Refer to the General Manual, Part IV, Chapter 8. Remember, the Inspector has **ten days** to complete the investigation and submit a written report of the findings to the Regional Office.

Waiver Petition Investigation

All MP&E waiver petitions must be processed through the Washington, D.C., Headquarter's Office. Headquarters will assign a control number and publish the request in the *Federal Register* before transmission to the region for investigation. The region will then assign the waiver petition to an Inspector for investigation. Waiver petitions are handled pursuant to Title 49 CFR Part 211, which states that waiver decisions must be made not later than 9 months after receipt of the request. Therefore, the waiver investigation must be conducted in a timely manner. The Inspector will prepare an *Inspector Report Form for MP&E Petitions* and submit it to the Regional Office within thirty days. If the waiver petition investigation requires more than thirty days to complete, the Inspector will submit a memorandum or e-mail to the Regional Office detailing the delay. All recommendations from the Inspector and region must be supported with factual evidence, proof, and/or data, **not opinions**. *Caution:* The Inspector should never disclose to the petitioner what the recommendation will be, as the Railroad Safety Board has the final say. Refer to General Manual, Part IV, Chapter 7 for more details of the waiver process.

One-time Movements

From time to time railroads or equipment owners will request that FRA issue a "One-time Movement Authority" (OTM) to allow a non-complying car(s) or locomotive(s) to be moved for a specific purpose under specified conditions insuring for safety of the movement. It should be noted that FRA considers an OTM to be an exercise of its enforcement discretion in a limited number of specialized circumstances, and the granting of such authority does not relieve a party from any statutory liability applicable to such movements. At no time, shall an Inspector or Regional personnel grant such a request without Headquarter's approval. All one-time movement requests must be made through Headquarters, Washington, D.C. This authority is not necessary for equipment that can be moved under §215.9, §229.9, or §238.15 & 17 authority. FRA considers granting OTM's under four categories:

1. Positioning - For example, an over-age car or non-complying locomotive being moved to a railroad museum for permanent display, or non-complying equipment moved to ports for shipment to a foreign country;
2. Dismantling - A wreck-damaged car or locomotive that is deemed to be not economically repairable, or an over-aged or retired car or locomotive that needs to be moved to a scrap yard for dismantling;
3. Repair - Movement for repair requests are the most common, and also the most often denied of the three categories. For FRA to consider issuing authority for movement of

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non-complying equipment for repair, the circumstances related to the movement must be unique and/or the necessary repairs must require specialized facilities or personnel skills. For example, the nearest facility may not be equipped to fully effect the necessary repairs, such as heavily wreck damaged locomotives, or tank cars.

4. Prototypes - Special demonstrations and testing of prototype equipment.

To obtain “One-time Movement Authority” from FRA, a letter must be submitted on company letterhead to:

FRA’s Director of the Office of Safety Assurance and Compliance
400 Seventh Street, S.W.
Mail Stop 25
Washington, DC 20590

The letter must contain the following information:

1. The reporting mark and the type of equipment (e.g. locomotive, covered hopper car, passenger car), for which the relief is requested, along with the corresponding Federal Safety Regulation [e.g., 49 C.F.R. 215.203(a)(1) *Restricted Cars*];
2. The status of the equipment, to include all non-complying components. State the cause of any damage (e.g., collision/sideswipe, grade crossing collision, derailment). Also, address any precautions taken to ensure the safety of railroad personnel during the move, such as removal of sharp edges, loose or crushed components, addition of temporary safety appliances and/or caution tape, roped-off stairway, etc.;
3. The point of origin and final destination of the equipment, including the specific route - to include any stops or layovers (such as for unloading and cleaning of tank cars) and all railroads that will be involved with the movement;
4. The rationale for the request (why the repairs can not be made at the current or nearest repair location);
5. Any restrictions the railroad or car owner believes should be applied to the movement;
6. The point of contact (name, address, telephone and fax number(s)) where the subject equipment is located, so that an FRA Inspector can schedule an inspection;
7. Name, title, address, telephone and fax number of the person requesting the OTM.

In order to expedite the process, the OTM request may be faxed to FRA’s Headquarters in Washington, DC at (202) 493-6230. The fax cover sheet should be addressed to the attention of the Staff Director, Motive Power & Equipment Division. However, the signed original request letter must be mailed to the above address.

Once the OTM request is received, it will be logged into FRA’s tracking system and assigned to

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a Railroad Safety Specialist. The headquarters Specialist will contact the Region of the originating move and request an inspection by a Regional Inspector. Once the inspection report is provided, the headquarters Specialist will develop a written reply with appropriate safety conditions. A signed copy of the reply will be faxed to the requester, with the original sent via mail.

Safety Assurance and Compliance Program - SACP

SACP seeks to address safety problems at the level where they originate. If they are systemic in nature, FRA seeks a system-wide solution going to the problem's root causes. FRA attempts to reach solutions to system-wide problems by creating partnerships with railroads, shippers, and their employees. Investing those responsible for actually implementing a solution in the process of devising that solution is a time-honored way of increasing the chances of success. When solutions are identified, they are embodied in a SACP action plan. FRA then monitors the implementation of that action plan to ensure safety commitments are fulfilled.

Enforcement of the Federal railroad safety laws is a very important part of SACP. In fact, FRA's strategic plan states that uniform enforcement of the safety laws is FRA's primary mission. In very general terms, *our enforcement must be reasonable, fair, and firm, and it should be focused on the most important safety issues we confront*. Enforcement that meets this description will be a very powerful tool for motivating the industry toward FRA's goal-shared by the entire industry – of zero accidents and zero injuries.

Railroads benefit from the enforcement restraint we show during development of system-wide Safety Profiles. However, when a railroad (or shipper) has agreed to a Safety Action Plan to address those issues and then fails to follow through on specified action items, any noncompliance that results is an especially strong candidate for enforcement action. In such situations, the railroad has demonstrated an unwillingness or inability to follow through on its safety commitments to address identified safety hazards, which would only be encouraged by FRA's further lenience. Unless there is a compelling reason to the contrary (e.g., FRA detected only a handful of minor violations after a dramatic systemic improvement demonstrating the railroad's full commitment), these situations should lead to enforcement actions. As discussed above, before initiating such actions, Inspectors need to consult with the SACP Team Leader to ensure a coordinated FRA approach.

Any enforcement actions that do arise from such situations should be marked clearly on the transmittal sheet to the Office of Chief Counsel as "SACP Follow-up Violations." The violation report should state clearly what the railroad committed to do as an action item and how the

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violations demonstrate a failure to live up to that commitment. FRA attorneys will transmit such violations with an especially stern penalty demand letter requiring a response within 30 days and explaining that FRA expects either payment in full or prompt negotiations resulting in a payment of a very high proportion of the initial amount assessed. For more information, refer to the General Manual, Part V, Chapters 1 and 5.

Focused Enforcement

Focused enforcement entails concentrating enforcement efforts primarily on the types of violations most likely to cause an actual train accident or injury. FRA's accident/injury database provides a wealth of information on what these leading causes of accidents and injuries are. The basic principle here is allocating our finite enforcement resources on those areas where improvements in compliance are most likely to produce maximum safety benefits. The principle is the same with regard to allocating inspection resources; as discussed in a separate document on inspections, we need to use available information on safety risk criteria to better guide our selection of inspection priorities.

FRA Inspectors shall utilize FRA's accident, injury, and inspection data to gain better insight into the types of violations that are actually causing large numbers of accidents and injuries. While much of the information is already available to the field, FRA will distribute to the field data summaries showing the leading causes of train accidents and injuries by safety discipline, cause code, and regulatory section. The data will be industry-wide and broken down by railroad. With this information, Inspectors will be better equipped to weigh the discretion criteria concerning the inherent seriousness of violations and the level of risk posed in specific circumstances. This is not to suggest that enforcement decisions are to become entirely driven by data. Direct observations and experience will always be necessary elements of these decisions. However, because the agency has adopted certain performance goals linked directly to reducing the rate of certain unsafe events, we need to make better use of the data we collect to help guide our achievement of those goals.

In-depth accident analyses are conducted to determine if any laws, rules, or orders within FRA's jurisdiction have been violated and what remedial action should be taken. In addition, Inspectors must study accident trends in their inspection territory, especially those attributed to human factors and mechanical practices; to include inspections, tests and repairs. Information is available for each railroad in the Inspector's territory and will be helpful in outlining inspection plans and setting safety priorities. Site-specific inspections should be performed on the basis of each Inspector's knowledge of enforcement areas requiring more attention to ensure safety. An Inspector's

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knowledge of each railroad within the inspection territory should determine the types of inspections which must be performed. For example, if a recent human factors-caused accident was related to an improper air brake inspection, concentrated inspections of the railroad's air brake inspections should be conducted at various times throughout a 24-hour period, to include weekends. Where Inspectors are focusing on leading causes of accidents and injuries, their violation reports should summarize the factors underlying their decision.

In the meantime, Inspectors are encouraged to make use of data already at their disposal, including accident data, inspection data, and their own experience about the most important safety hazards. Inspectors should give this information great weight and strongly consider enforcement action whenever these especially unsafe conditions occur, with a goal of maximizing the safety return on enforcement efforts. While some enforcement actions will continue to be necessary on matters that are not likely to actually cause accidents or injuries, but violate regulations that are important underpinnings of an effective regulatory program (e.g., recordkeeping), those matters that are serious safety concerns are more likely to be the prime candidates for enforcement actions. Reporting, recordkeeping, and inspection violations become more important to the extent they are widespread and/or bear directly on compliance with substantive requirements.

Over time, this more careful focus on how enforcement discretion is exercised should significantly improve FRA's utilization of limited resources regarding compliance oversight. On the other hand, as we refine the process, we may decide to adopt a "zero tolerance" (i.e., always enforce) policy for the most egregious and flagrant violations. The goal is not to achieve a particular volume of enforcement actions on the high or low side. The goal is a compliance program in which enforcement discretion is routinely exercised in a commonsense way to address important problems that more cooperative methods have not resolved.

Complaint Investigation

Refer to the General Manual, Part IV, Chapter 8, for detailed procedures.

Complaints are generally filed by railroad employees, labor organizations, or the general public. The complaint may be submitted by either formal letter, e-mail, telephonic, or verbal format. Complaints may be referred by other State or Federal agencies. The Inspector assigned to a complaint investigation normally knows the identity of the complainant and the names of potentially helpful contacts. The investigation must be conducted without revealing to anybody that a complaint is or was under investigation. An Inspector may not, under any circumstances, reveal the identity of the complainant to anyone not employed by the FRA, unless:

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1. The complainant authorizes such disclosure in writing; or
2. FRA refers the matter to the Attorney General (AG) for enforcement, discussion limited to persons within the AG's office. See 49 U.S.C. §20109.

The region will assign the complaint to an Inspector, who will complete the investigation within 60 days. If a complaint investigation cannot be completed in 60 days, the Inspector will write a memorandum or e-mail to the Regional Office explaining the reason(s) for the delay. Each five days thereafter, until completion of the complaint, the Inspector will submit a memorandum or e-mail to the Regional Office explaining the status of the complaint.

Sample Car/Locomotive Inspection

Sample Car/Locomotive Inspections are performed as a courtesy to the manufacturers, to ensure that the equipment is built in accordance with **all** applicable Federal regulations and requirements. Car builders that desire to have the FRA review their equipment for compliance with safety appliance standards are to submit their safety appliance arrangement drawings, prints, etc. to the FRA Office of Safety Assurance and Compliance for review, at least 60 days prior to construction. All requests and drawings should be submitted to the Director of the Office of Safety Assurance and Compliance at the following address:

400 7th Street, S.W.
Mail Stop 25
Washington, DC 20590

FRA will review the documents submitted and advise the builder as to the status. The builder should then notify the Office of Safety Assurance and Compliance at least 30 days in advance of when the freight car will be ready for inspection. Once the request is received, Headquarters will coordinate with the appropriate Regional Office as to the date and location of a scheduled sample car/locomotive inspection. The Regional Administrator will appoint an experienced Inspector to conduct the inspection. If the location of the sample car/locomotive inspection is in Canada, the Regional Office shall coordinate the inspection activity with representatives from Transport Canada so that a joint inspection can be conducted.

The individual assigned to perform the sample car/locomotive inspection shall review in advance the current MP&E Sample Car/Locomotive Inspection Procedure Guidelines; pertinent regulations covering the type of car or locomotive to be inspected; and (if possible) the current Association

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of American Railroads (AAR) Manual of Standards and Recommended Practices or the American Public Transit Association (APTA) Standards applicable to the car or locomotive to be inspected. Inspectors should have the necessary equipment to perform the inspection (i.e., appropriate regulations and standards, gauges, camera, ruler and measuring devices).

The equipment inspected must strictly comply with the applicable sections of:

- ✓ 49 CFR Part 215 Freight Car Safety Standards
- ✓ 49 CFR Part 223 Safety Glazing Standards
- ✓ 49 CFR 229 Locomotive Safety Standards
- ✓ 49 CFR 231 Safety Appliance Standards
- ✓ 49 CFR 232 Power Brake Systems
- ✓ 49 CFR 238 Passenger Car Equipment Safety Standards
- ✓ 49 CFR 239 Passenger Train Emergency Preparedness

In addition to regulatory requirements, the equipment should be examined from a standpoint of overall operational safety. Conditions not covered by regulations should be addressed in the assessment of the equipment. Photograph and describe in detail any condition detrimental to safety, or that has the "potential" to become a detriment to safety.

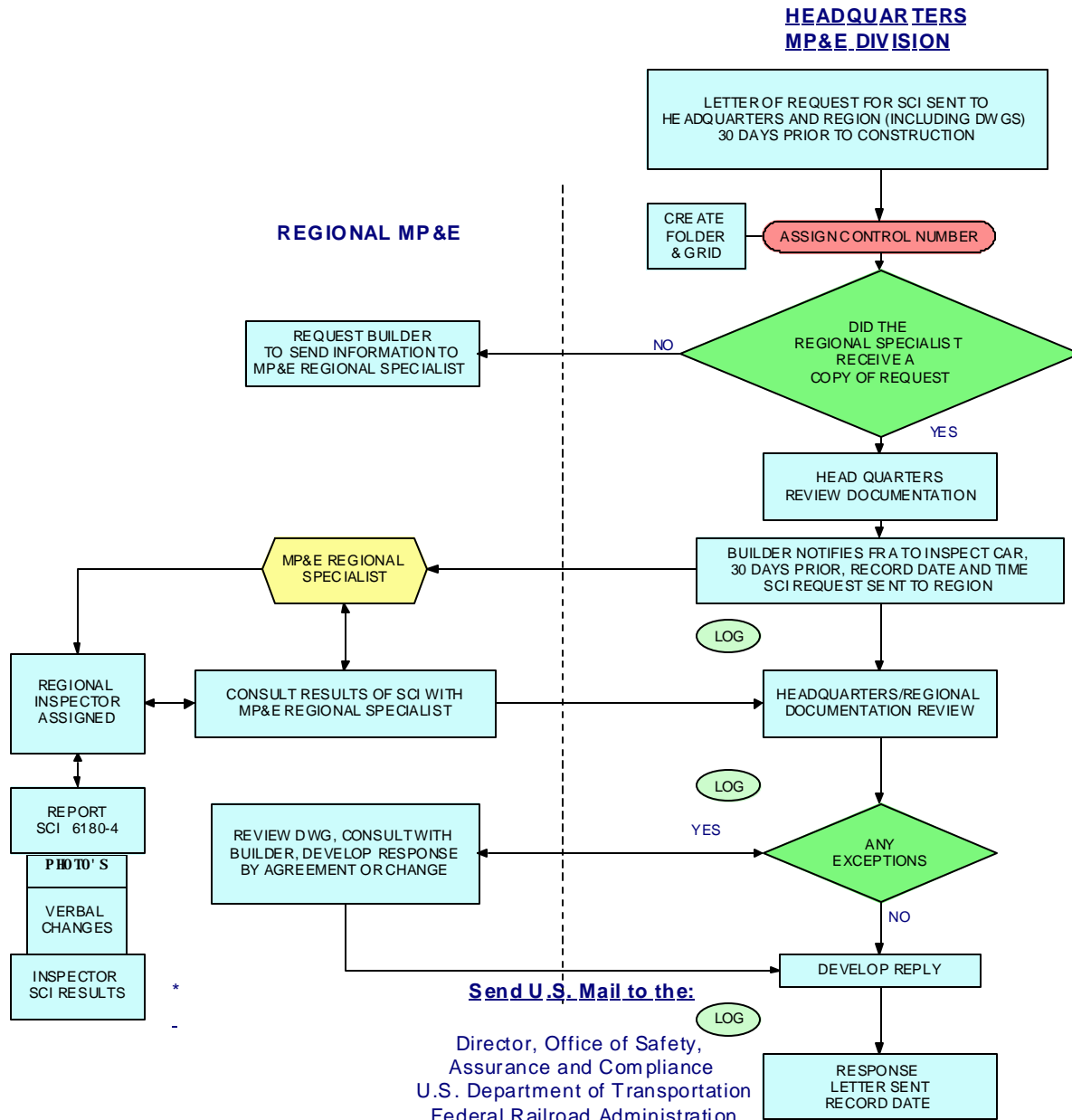
While performing the inspection of the brake system, it is important to examine the location of pertinent brake components which must be observed during the performance of required brake inspections by railroad Inspectors. The brake must be designed so that a railroad Inspector can observe from a safe position either the piston travel, an accurate indicator which shows piston travel, or any other means by which the brake system is actuated. The design shall not require the railroad Inspector to place himself or herself on, under, or between components of the equipment to observe the brake actuation or release during a required train air brake inspection.

Unsafe and questionable conditions must be identified and reported to the car/locomotive manufacturer during the inspection.

FRA Form F6180.4, Special Inspection of Safety Appliance Equipment, will be completed for each type of equipment inspected. Normally a sample car inspection does not require an FRA F6180.96 report. A computerized version of the F6180.4 report has been developed for use with WordPerfect.

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SAMPLE CAR INSPECTION PROCESS Motive Power and Equipment Division



Regular Delivery

RRS-10, Mail Stop 25
400 Seventh Street, SW
Washington, DC 20590-0002

Overnight Express Mail

1120 Vermont Avenue, NW
Suite 6
Washington, DC 20005

* To expedite processing also send via e-mail to the current MP&E Safety Appliance Specialist:
stephen.carullo@fra.dot.gov

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Each block of the F6180.4 shall be completed. Enter "N/A" in spaces that do not apply. If an appliance deviates from the standards, enter the dimensions or description in the appropriate space on the front of the form. Any deviation from FRA regulations must be documented on the F6180.4 report and reported to the builder's representative for corrective action. If necessary, a memorandum may be used to supplement the F6180.4.

The Hand Brake entry should include the manufacturer and model number.

The Handhold and Ladder Tread entries should show clear, usable length.

The Power Brake block should show the type of brake applied, such as WABCO - ABDWXL, or NYAB - ABDW. Additional information may be included describing the brake system (i.e., 12 inch cylinder, empty- load sensing equipped, etc.).

A minimum of six photographs must be supplied that clearly show the safety appliance arrangements and any non-complying conditions. Each corner of the car and both ends of the car. Also, any defect noted should have a photo to support it.

The Inspector should use the "sample car inspection check list" when performing the sample car inspection and submit a copy of the check list with the F6180.4 report in the package to HQ. The Inspector should also try to obtain a copy of the golden shoe test report, along with any other brake test reports, slewing reports, etc., and include the copies in the package that will be forwarded to HQ.

At the conclusion of the inspection, the Inspector should inform the car builder of the findings. However, the Inspector **is not to advise the builder that the "sample car" meets all Federal requirements.** Headquarters will advise the builder and the Region on the car's status of compliance or non-compliance. The Office of Safety Assurance and Compliance will provide the car builder, in writing, the results of the special car inspection

Operation Life Saver Presentations

Refer to the General Manual, Part VI, Chapters 1 & 2, for certification requirements and presentation guidelines.

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Regular Inspections

Refer to the General Manual, Part IV Chapter 2 for detailed information regarding regular inspection activities.

MP&E Inspectors are not required to announce their presence on railroad property, nor are they required to provide advance notice of an inspection, investigation, follow-up, or surveillance activity. However, advance notice may be necessary to insure the availability of records, equipment, carrier representatives, or persons to be interviewed.

Upon completion of an inspection, the Inspectors shall confer with a railroad representative to advise of any non-complying conditions or practices discovered by the inspection. The Inspector should only cite the defective condition(s) and the applicable regulation that is in non-compliance. If time permits, a written report(s) will be given to a railroad representative before the Inspector leaves the railroad's property. If the railroad representative is not present, or the Inspector does not have sufficient time to complete a written report, then one shall be completed during the next work period and delivered or forwarded to the railroad representative.

When conducting an inspection at a remote location, where no railroad representative is available, a railroad official shall be contacted at the completion of the inspection and advised of the results.

For each inspection, the railroad must be provided a copy of the reports(s), even if no defective condition(s) was found.

Follow-up investigations or inspections should be periodically conducted to confirm that non-compliant conditions and/or deficiencies have been corrected. An important principle to a follow-up investigation or inspection is that it need not be conducted at the same location or facility where the original violation or deficiency was discovered.

In case of less egregious violations or deficiencies, the Inspector and Specialist may exercise discretion in scheduling follow-up inspections in balance with other inspection priorities. These types of investigations or inspections should still be conducted within a reasonable time after the initial violation or deficiency was discovered. The necessity and frequency for follow-up inspections can be determined by many factors, such as:

- ✓ Severity of defective equipment at a given location
- ✓ Equipment/defect ratio

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- ✓ Knowledge or suspicion that repairs are not properly executed
- ✓ Inadequate supply or low inventory of replacement material
- ✓ Work force/defective equipment ratio
- ✓ SACP Activity/Findings

Certain situations require mandatory follow-up investigations within 30 days from the day of discovery. These follow-up investigations are required in situations:

- ! Where FRA has issued an emergency order based on a risk to personal or public safety;
- ! Where an inspection determined that the railroad failed to report death, injury or occupational illness, highway-rail crossing, and/or rail equipment accidents/incidents;
- ! Where certain occurrences have generated public concern, special interest, or have high public visibility.